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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,908	12/22/2000	Marc Steven Price	69-001	6595

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EXAMINER	
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ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/741,908	PRICE ET AL.	
	Examiner	Art Unit	
	Shannon S. Saliard	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 5-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02 March 2007 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 12-16, 18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 1, 12-15, 18, and 19-23** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. **Claims 1, 12-15, and 19-23**, as currently recited, appear to be directed to nothing more than a series of steps including receiving, accumulating, pricing, and calculating such as pricing information for an electronic entity without any tangible result since there is no output and are therefore deemed to be non-statutory.

A claimed invention is deemed to be statutory, if the claimed invention produces a useful, concrete, and tangible result. An invention, which is eligible or patenting under 35 U.S.C. 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The fundamental test for patent eligibility is thus to determine whether the claimed invention produces a "use, concrete and tangible result". See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ2dat 1452 and *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d at 1373, 47 USPQ2d at 1601 (Fed. Cir. 1998). The test for practical application as applied by the examiner involves the determination of the following factors:

(a) "Useful" – The Supreme Court in *Diamond v. Diehr* requires that the examiner look at the claimed invention as a whole and compare any asserted utility with the claimed invention to determine whether the asserted utility is accomplished. Applying utility case law the examiner will note that:

i. the utility need not be expressly recited in the claims, rather it may be inferred.

ii. if the utility is not asserted in the written description, then it must be well established.

(b) "Tangible" – Applying *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. 101. In

Warmerdam the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium, which enabled its functionality to be realized.

(c) "Concrete" – Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. An appropriate rejection under 35 U.S.C. 101 should be accompanied by a lack of enablement rejection, because the invention cannot operate as intended without undue experimentation.

In the present case, the claimed invention accumulates electronic entity events for dynamically pricing the events (i.e., useful and concrete). While the invention may be concrete and/ or useful, there does not appear to be any tangible result.

6. **Claim 18** does not recite that the computer readable storage comprises a computer readable program, instructions, or code embodied thereon and configured to control a computer to perform specific functional steps. The lack of recitation of any specific computer readable medium results in a claim that recites functionally descriptive material (defined as "data structures and computer programs with impart functionality when encoded on a computer readable medium" by the Computer-Implemented Invention Guidelines) without any interrelationships between the data structure and other aspects of the invention that would permit the data structure's functionality to be realized.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 1, 12-15, 18, and 19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **claims 1, 12-15, 18, and 19,** the limitations "dynamically and automatically, by a computer, pricing servicing of the events by the third party responsive to an electronic entity event pricing plan" and "wherein the pricing includes selecting the pricing plan for the exchange transaction to correspond to the first party, the second party or the third party of the exchange transaction" as recited are vague and indefinite. It unclear to the Examiner how the pricing plan corresponds to the first party, second party, or third party *if* the pricing is for servicing of the event by the third party.

As per **claims 1, 12-16, 18, and 19**, the limitations "wherein the rules can be shared" and "wherein at least one rule can specify" as recited are vague and indefinite. These limitations are not positively recited. Thus, they do not further limit the claim.

As per **claim 1, 12-16, 18, and 19**, the limitation "wherein the rules can be shared" as recited is vague and indefinite. There is lack of antecedent basis in the claim for this limitation.

As per **claim 1, 12-16, 18, and 19**, the limitation, "pricing servicing off the events" as recited is vague and indefinite. It is unclear to the Examiner if the Applicant is referring to "the electronic entity events" or "collection of electronic entity events".

As per **claim 1, 12-16, 18, and 19**, the limitation "shared among plural pricing plans" as recited is vague and indefinite. It is unclear to the Examiner if the Applicant is referring to the "plural different pricing plans" or some other plural pricing plans.

As per **claim 1, 12-16, 18, and 19**, the limitation " the outcome of the at least one rule" as recited is vague and indefinite. There is lack of antecedent basis in the claim for this limitation.

As per **claim 20**, the limitation "the accumulated exchange transactions" as recited is vague and indefinite. There is lack of antecedent basis in the claim for this limitation.

As per **claim 22**, the limitation "the at least one rule can specify" as recited is vague and indefinite. The limitation is not positively recited. Thus, it does not further limit the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. **Claims 1-3, 5-13, and 16-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeder et al [US 5,852,812] in view of Farhat et al [US 2001//0034693].

As per **claims 1, 12, 13, 16, 18, and 19**, Reeder et al receiving electronic entity events for exchange transactions between first and second parties serviced by a third party [col 5, line 66- col 6, line 18]; accumulating the electronic entity events into a collection of electronic entity events [col 10, lines 3-8]; and dynamically and automatically, by a computer, pricing servicing of the events by the third party responsive to an electronic entity event pricing plan where wherein there are plural different pricing plans [col 22; lines 7-50], wherein each pricing plan includes a decision network, wherein a node of the decision network includes at least one rule, wherein the rules can be shared among plural pricing plans, wherein a path from the node for an exchange transaction is determined from the outcome of the at least one rule using the exchange transaction corresponding to the electronic entity event as input [col 10, lines 46-52; col 15, line 30-col 17], wherein the pricing includes selecting the pricing plan for the exchange transaction to correspond to the first party, the second party or the third, party, of the exchange transaction, traversing the decision network in the selected pricing plan, and executing the rules in the traversed path through the decision network to calculate a price for the electronic entity event [col 10, lines 46-52; col 15, line 30-col 17; col 22; lines 7-50]. Reeder et al does not explicitly disclose wherein the rules are stored in a database. However, Reeder discloses that the pricing rules are written in pseudo-code and used to determine a charge for a particular transaction event and that

the pricing rules are "looked up" [col 15, line 34-col 16, line 17]. Reeder et al does not disclose wherein the at least one rule can specify use of the collection to determine the outcome of the at least one rule. However, Farhat et al discloses using an accumulated total number of transactions to determine rates for a transaction [0078]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farat et al to reward loyal customers.

As per **claim 2**, Reeder et al further discloses wherein the event comprises one of a transaction with a good/service exchanged as part of the transaction, multiple transactions with goods/services, a product query, an advertisement review, transferring to another site, an exchange subscription fee, or a customer characteristic [col 9, lines 1-7].

As per **claim 3**, Reeder et al further discloses wherein the pricing is responsive to relationships among buyers and sellers comprising negotiated customer specific rates and discounts [col 10, lines 46-58].

As per **claim 5**, Reeder et al further discloses wherein said rules price the transaction across goods/services [col 10,lines 37-45].

As per **claim 6**, Reeder et al further discloses wherein the rules based comprise conditional decisions [col 10, lines 46-58].

As per **claim 7**, Reeder et al further discloses wherein the rules comprise pricing calculation algorithms [col 15, line 42- col 16, line 17].

As per **claim 8**, Reeder et al does not disclose wherein the algorithms comprise one of single unit, double unit, taper discount, tier, tier discount, percent, flat, charge, minimum, maximum, accumulation, threshold, multi-unit or taper charges. However, Farhat et al discloses a pricing model that comprise one of single unit, double unit, taper discount, tier, tier discount, percent, flat, charge, minimum, maximum, accumulation, threshold, multi-unit or taper charges [0071-0076]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farhat et al to reward loyal customers.

As per **claim 9**, Reeder et al does not disclose wherein said electronic event has a transaction price and a good/service price. However, Farhat et al discloses converting accounting data to define the price that the access broker system owes the provider, and the price that a customer owes the access broker [0068]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include wherein said electronic event has a transaction price and a good/service price so that each party is paid for services provided.

As per **claim 10**, Reeder et al does not explicitly disclose wherein said electronic event comprises multiple transactions. However, Farhat et al discloses discounting based on number of transactions [0078]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farhat et al to reward loyal customers.

As per **claim 11**, Reeder et al does not disclose wherein the pricing comprises detail and summary pricing. However, the Examiner takes Official Notice that it is old and well known to one of ordinary skill in the billing industry to provide a customer with detail and summary pricing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include wherein the pricing comprises detail and summary pricing to facilitate customer understanding of how charges where applied.

As per **claim 17**, Reeder et al does not disclose wherein said pricing mechanism comprises a code-based pricer and non-code based rules used by the pricer to price the event [col 15, line 40-col 16,lines 17].

As per **claim 20**, Reeder et al does not disclose wherein the collection specified by the rules is the accumulated exchange transactions over a time period. However, Farhat et al disclose billing transactions based on usage during a billing cycle [0078; 0091; 0125]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farhat et al to minimize the transactions that the customer has to manage.

As per **claim 21**, Reeder et al does not disclose wherein the collection specified by the rules is the exchange transactions accumulated before the electronic entity event. However, Farhat discloses using number of transaction balances to determine an applicable pricing model [0150-0165]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et

al to include wherein the collection specified by the rules is the exchange transactions accumulated before the electronic entity event to reward loyal customers.

As per **claim 22**, Reeder et al does not disclose wherein the at least one rule further can specify aggregating a field in the electronic entity events in the collection, wherein the aggregated field is used to determine the outcome of the at least one rule [col 10, lines 46-52; col 15, line 30-col 17; col 22; lines 7-50].

As per **claim 23**, Reeder et al does not disclose further comprising: after accumulating an electronic entity event and after the pricing, modifying the pricing plan, after the modifying, performing the pricing for the electronic entity event using the modified pricing plan. However, Farhat et al discloses using number of transaction balances to determine an applicable pricing model [0150-0165]. Furthermore, Farhat et al discloses that when a customer reaches a predetermined threshold, the pricing access changes and the customer is provided a discount based on the particular tier [0080]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include: after accumulating an electronic entity event and after the pricing, modifying the pricing plan, after the modifying, performing the pricing for the electronic entity event using the modified pricing plan to reward loyal customers.

11. **Claim 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reeder et al [US 5,852,812] in view of Farhat et al [US 2001//0034693] and Walker et al [US 6,754,636].

As per **claim 14**, Reeder et al receiving electronic entity events for exchange transactions between first and second parties serviced by a third party [col 5, line 66-col 6, line 18]; accumulating the electronic entity events into a collection of electronic entity events [col 10, lines 3-8]; and dynamically and automatically, by a computer, pricing servicing of the events by the third party responsive to an electronic entity event pricing plan where wherein there are plural different pricing plans [col 22; lines 7-50], wherein each pricing plan includes a decision network, wherein a node of the decision network includes at least one rule, wherein the rules can be shared among plural pricing plans, wherein a path from the node for an exchange transaction is determined from the outcome of the at least one rule using the exchange transaction corresponding to the electronic entity event as input [col 10, lines 46-52; col 15, line 30-col 17], wherein the pricing includes selecting the pricing plan for the exchange transaction to correspond to the first party, the second party or the third, party, of the exchange transaction, traversing the decision network in the selected pricing plan, and executing the rules in the traversed path through the decision network to calculate a price for the electronic entity event [col 10, lines 46-52; col 15, line 30-col 17; col 22; lines 7-50]. Reeder et al does not explicitly disclose wherein the rules are stored in a database. However, Reeder discloses that the pricing rules are written in pseudo-code and used to determine a charge for a particular transaction event and that the pricing rules are "looked up" [col 15, line 34-col 16, line 17]. Reeder et al does not disclose an electronic exchange event pricing plan having transaction pricing, cross product pricing, summary pricing and non-transaction pricing. However, Walker et al discloses using

transaction pricing, cross product pricing, summary pricing and non-transaction pricing to determine whether an offer is acceptable (see Figs. 1B, 2A, 2B; col. 7, line 48 - col. 8, line 30; col. 14, lines 1-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Walker et al so that each party is paid for services provided. Reeder et al does not disclose wherein the at least one rule can specify use of the collection to determine the outcome of the at least one rule. However, Farhat et al discloses using an accumulated total number of transactions to determine rates for a transaction [0078]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farat et al to reward loyal customers.

12. **Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reeder et al [US 5,852,812] in view of Petters et al [US 2001/0018672] in view of Farhat et al [US 2001//0034693].

As per **claim 15**, Reeder et al receiving electronic entity events for exchange transactions between first and second parties serviced by a third party [col 5, line 66-col 6, line 18]; accumulating the electronic entity events into a collection of electronic entity events [col 10, lines 3-8]; and dynamically and automatically, by a computer, pricing servicing of the events by the third party responsive to an electronic entity event pricing plan where wherein there are plural different pricing plans [col 22; lines 7-50], wherein each pricing plan includes a decision network, wherein a node of the decision

network includes at least one rule, wherein the rules can be shared among plural pricing plans, wherein a path from the node for an exchange transaction is determined from the outcome of the at least one rule using the exchange transaction corresponding to the electronic entity event as input [col 10, lines 46-52; col 15, line 30-col 17], wherein the pricing includes selecting the pricing plan for the exchange transaction to correspond to the first party, the second party or the third, party, of the exchange transaction, traversing the decision network in the selected pricing plan, and executing the rules in the traversed path through the decision network to calculate a price for the electronic entity event [col 10, lines 46-52; col 15, line 30-col 17; col 22; lines 7-50], and where the rules in the pricing plan include pricing the transactions [col 10, lines 37-42] . Reeder et al does not explicitly disclose wherein the rules are stored in a database. However, Reeder discloses that the pricing rules are written in pseudo-code and used to determine a charge for a particular transaction event and that the pricing rules are "looked up" [col 15, line 34-col 16, line 17]. Reeder et al does not disclose pricing across the transactions, pricing across the goods/services, pricing with charge limitations and pricing non-transactions using conditional pricing decisions and pricing calculation algorithms comprising single unit, double unit, taper discount, tier, tier discount, percent, flat charge, minimum, maximum, accumulation, threshold, multi-unit, and taper charges. However, Petters et al discloses pricing the transactions [0103-0106], pricing across the transactions [0103; see Table], pricing across the goods/services [0103; see Table], pricing with charge limitations [0103; see Table], and pricing non-transactions [0105] using conditional pricing decisions [0106] and pricing

calculation algorithms comprising single unit, double unit, taper discount, tier, tier discount, percent, flat, charge, minimum, maximum, accumulation, threshold, multi-unit and taper charges where the pricing is based on a collection of the exchange transactions [0103-0106; see Table]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Petters et al to reward customer loyalty. Reeder et al does not disclose wherein the at least one rule can specify use of the collection to determine the outcome of the at least one rule. However, Farhat et al discloses using an accumulated total number of transactions to determine rates for a transaction [0078]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Reeder et al to include the method disclosed by Farat et al to reward loyal customers.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shannon S. Saliard whose telephone number is 571-272-5587. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Shannon S Sallard
Examiner
Art Unit 3628

THOMAS A. DIXON
PRIMARY EXAMINER

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